REMARKS

This application has been carefully reviewed in light of the Office Action. Claims 1-35 and 37-46 are pending. The Office Action rejects Claims 1-35 and 37-46. Applicant has amended Claims 1, 13, 24, and 37, and cancelled Claims 3, 15, and 26. Applicant respectfully requests reconsideration and favorable action in this case.

Rejections Under 35 U.S.C. § 112

The Office Action rejects Claims 1, 13, 24, and 37 under 35 U.S.C. § 112, first paragraph, stating that the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims due to the phrase "before any executing." Applicant respectfully traverses these rejections. However, in order to advance prosecution, Applicant has amended Claims 1, 13, 24, and 37 to remove the phrase "before any executing," rendering the rejections moot. Reconsideration and favorable action is requested.

Rejections Under 35 U.S.C. § 102

The Office Action rejects Claims 1-35 and 37-46 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,771,290 to Hoyle ("*Hoyle*"). Applicant respectfully traverses these rejections.

Independent Claim 1, as amended, is allowable at least because *Hoyle* fails to disclose, expressly or inherently, "the selected file needing access, either directly or indirectly, to at least one associated file in order to be used." Support for this amendment can be found at least at the passages at Page 8, Lines 30-31 and Page 10, Lines 4-7 of the specification. The Office Action relies on an updated program module of *Hoyle* in an attempt to disclose a selected file, and relies on an updated version identifier of *Hoyle* in an attempt to disclose an associated file. *See Office Action*, Page 3-4. Whether or not this is correct, *Hoyle* fails to disclose "the selected file needing access, either directly or indirectly, to at least one associated file in order to be used" of amended Claim 1. For example, the passage at Col. 6, Lines 3-6 of *Hoyle* discloses that the program module (which is not alleged to be anything) accesses the alleged associated file, but fails to disclose that the alleged selected file accesses the alleged associated file:

> One of the <u>program modules</u> is operable upon execution to access the stored
> version identifier(s) and at least one [<u>alleged associated file</u>] from a server via
> a network, including a global public network such as the Internet.

(emphasis added). As a result, the alleged selected file (<u>updated</u> program module) fails to disclose the limitations of amended Claim 1 because it does not access the alleged associated file (updated version identifier).

Furthermore, it cannot be argued that the program module (which is currently not alleged to be anything) of *Hoyle* discloses the selected file of Claim 1 because the program module merely accesses the alleged associated file in order to be upgraded, **not in order to be used**. *See Hoyle*, Col. 5, Line 62 - Col. 6, Line 21. Consequently, *Hoyle* fails to disclose, teach, or suggest "the selected file <u>needing access</u>, either directly or indirectly, to at least one associated file <u>in order to be used</u>."

For at least these reasons, Independent Claim 1, as amended, is allowable, as are Claims 2 and 4-12 that depend therefrom. For analogous reasons, Independent Claims 13, 24, and 37, as amended, are allowable, as are Claims 14, 16-23, 25, 27-35, and 38-46 that depend therefrom. Reconsideration and favorable action is requested.

Independent Claim 1, as amended, is further allowable at least because *Hoyle* fails to disclose, expressly or inherently, "initiating downloading of the at least one associated file of the selected file to occur at substantially the same time as the selected file." Support for this amendment can be found at least at the passages at Page 13, Lines 21-24 and Page 19, Lines 27-31 of the specification. As discussed above, the Office Action attempts to rely on an updated program module of *Hoyle* to disclose a selected file, and also attempts to rely on an updated version identifier of *Hoyle* to disclose an associated file. *See Office Action*, Page 3-4. Whether or not this is correct, *Hoyle* fails to disclose "initiating downloading of the at least one <u>associated file</u> of the selected file <u>to occur at substantially the same time as the selected file</u>" of amended Claim 1. For example, the passage at Col. 5, Line 62 - Col. 6, Line 21 of *Hoyle* discloses that the alleged selected file is downloaded, but <u>fails to disclose that the alleged associated file is ever downloaded</u>, let alone at substantially the same time as the alleged selected file:

> In accordance with another aspect of the invention, there is provided a
> computer-readable memory for use by a computer to provide a user of the
> computer with an automatically-upgradeable software application . . . One of
> the program modules is operable upon execution to <u>access the stored version</u>

> identifier(s) and at least one [alleged selected file] from a server via a network, including a global public network such as the Internet. These [alleged associated file(s)] represent [alleged selected files] accessible from a server via the network. This program module is further operable to download one or more [alleged selected files] when the stored version identifier and the [alleged associated file] are different, with the [alleged selected file(s)] replacing one or more of the program modules.

(emphasis added). In fact, the passage expressly discloses that a program module may only access the version identifiers from a server; as a result, the alleged associated file (updated version identifier) is not downloaded. Consequently, *Hoyle* fails to disclose, expressly or inherently, "initiating downloading of the at least one associated file of the selected file to occur at substantially the same time as the selected file."

For at least this additional reason, Independent Claim 1, as amended, is allowable, as are Claims 2 and 4-12 that depend therefrom. For analogous reasons, Independent Claims 13, 24, and 37, as amended, are allowable, as are Claims 14, 16-23, 25, 27-35, and 38-46 that depend therefrom. Reconsideration and favorable action is requested.

Furthermore, in the Response to Arguments, the Office Action also suggests that the updated program module of *Hoyle* discloses a selected file, and further suggests that the software update of *Hoyle* discloses an associated file. *See Office Action*, Page 7. Applicant respectfully traverses these suggestions. For example, the software update is the updated program module, and not an associated file. *See Hoyle*, Col. 5, Line 62 - Col. 6, Line 21. Consequently, *Hoyle* fails to disclose, expressly or inherently, the limitations of amended Claim 1.

For at least this additional reason, Independent Claim 1, as amended, is allowable, as are Claims 2 and 4-12 that depend therefrom. For analogous reasons, Independent Claims 13, 24, and 37, as amended, are allowable, as are Claims 14, 16-23, 25, 27-35, and 38-46 that depend therefrom. Reconsideration and favorable action is requested.

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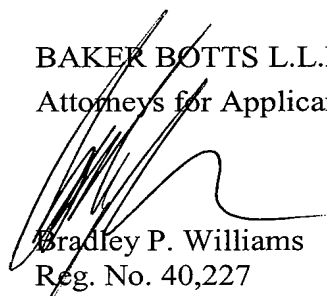075635.0104   Serial No. 10/085,218

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CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner believes that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact the undersigned Attorney for Applicant at the Examiner's convenience.

Although Applicant believes no other fees are due, the Commissioner is hereby authorized to charge any necessary additional fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

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